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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Eligibility for the Specialized )  
Mobile Radio Services and Radio )  
Services in the 220-222 MHz Land )  
Mobile Band and Use of Radio )  
Dispatch Communications )

GN Docket No. 94-90

DOCKET FILE COPY ORIGINAL

To: The Commission

**OPPOSITION OF THE  
RURAL CELLULAR ASSOCIATION  
TO THE PETITION FOR RECONSIDERATION OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The Rural Cellular Association ("RCA")<sup>1</sup> submits its opposition to the Request for Partial Reconsideration and for Clarification ("Petition") of the American Mobile Telecommunications Association, Inc. ("AMTA") pursuant Section 1.429(e) of the Commission's Rules, 47 C.F.R. § 1.429(e), and in response to the notice appearing in the Federal Register on May 9, 1995 (80 FR 24632). This Petition, based upon a misunderstanding of applicable law and policy, advocates an abrupt policy reversal which would disserve the public interest. Accordingly, RCA respectfully submits that the Petition should be denied. In support of this position, RCA shows the following:

1. RCA supported the Commission's tentative conclusion that elimination of the prohibition against the provision of dispatch services by mobile common carriers would serve the public interest

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<sup>1/</sup> RCA, an association representing the interests of small cellular operators serving rural America, filed Comments in this docket on October 5, 1994.

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by promoting competition and effecting regulatory parity.<sup>2</sup> Clearly, rural communities and their inhabitants<sup>3</sup> will benefit from repeal of the ban where the relatively few number of potential subscribers may not otherwise attract an initial or competitive service provider or encourage an existing common carrier to establish a wholly separate service. The confluence of two important additional policy goals -- the nationwide availability of a variety of services<sup>4</sup> and the efficient utilization of spectrum<sup>5</sup> -- also support the Commission's decision to eliminate the ban.

2. AMTA's protestations notwithstanding, the Commission's decision is consistent with both statutory directives and the public interest, and is amply supported by the record in this proceeding. In advocating reinstitution of the ban, AMTA urges the

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<sup>2/</sup> See Comments of RCA, pp. 3-4.

<sup>3/</sup> As RCA noted, farmers and ranchers, often the inhabitants of the most sparsely-populated sections of the country, are obvious beneficiaries of policies designed to promote the provision of initial or competitive services in rural areas. See RCA Comments at p. 3.

<sup>4/</sup> The Commission was created "[f]or the purpose of regulating interstate . . . commerce in communication by . . . radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide . . . radio communication service with adequate facilities at reasonable charges . . . ." Section 1 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 151.

<sup>5/</sup> Section 303 of the Act provides that the Commission shall "[s]tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest." 47 U.S.C. § 303(g).

Commission to ignore both Congressional mandates<sup>6</sup> and obvious public benefits<sup>7</sup> to shield entrenched dispatch service providers from a competitive environment. The Commission has correctly recognized that economic and marketplace considerations, rather than the artificial barrier of regulatory prohibition, should be allowed to guide the decision with respect to the variety of services to be offered. In fact, the original basis for the prohibition has now disappeared.<sup>8</sup>

3. RCA also takes exception to AMTA's unfounded suggestion that

[t]he fundamental issue in this proceeding . . . is whether spectrum which has been determined to be

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<sup>6/</sup> See supra nn. 4-5; see also Section 332(a) of the Act, which provides that, when taking actions to manage the spectrum, the Commission must consider

whether such actions will . . . improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements and marketplace demands; . . . [and] encourage competition and provide services to the largest feasible number of users . . . .

47 U.S.C. § 332(a)(2)-(3).

<sup>7/</sup> See, e.g., Report and Order, GN Docket No. 94-90, FCC 95-98, 9 FCC Rcd \_\_\_\_ (rel. Mar. 7, 1995) at paras. 29-31 ("R&O").

<sup>8/</sup> The Congressional adoption of the dispatch ban in 1982 was intended to ensure that common carrier services on common carrier frequencies were not displaced by dispatch services. See H.R.Rep. No. 765, 97th Cong. 2d Sess. 55-56 (1982). More than a decade later, as part of the Omnibus Budget Reconciliation Act of 1993, Congress granted the Commission the authority to repeal this prohibition in whole or in part. 47 U.S.C. § 332(c)(2)(1993). The Commission has found that new technologies, such as digitalization, "have minimized any concerns that using common carrier spectrum for dispatch would impair the licensees' capacity to provide common carrier service because digital technologies allow spectrum to be used more efficiently." R&O at para. 35 (citation omitted).

superfluous for the provision of cellular service should be retained automatically by the cellular operator to be used for alternative purposes.

Petition at 6. On the contrary, the issue in this proceeding is efficient utilization of licensed spectrum by authorized users.

4. The Commission, pursuant to its statutory mandate, has historically encouraged full and efficient utilization of the spectrum. With particular reference to mobile services, the Commission found that flexible utilization of the spectrum is in the public interest and, for many years now, has allowed "[l]icensees of cellular systems [to] use alternate cellular technologies and/or provide auxiliary common carrier services, including personal communications services . . . ." <sup>9</sup> The broad scope of this authority is demonstrated by the definition of "personal communications services" which includes all "[r]adio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks." <sup>10</sup> In removing the prohibition against dispatch services, the Commission merely recognized that its extant policy encourages the development of "innovative uses for [spectrum] that are responsive to consumer demand, including dispatch service." <sup>11</sup>

5. Finally, AMTA's suggestion that spectrum is "superfluous" demonstrates a fundamental misunderstanding of Commission policy.

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<sup>9</sup>/ 47 C.F.R. § 22.901(d).

<sup>10</sup>/ 47 C.F.R. § 24.5.

<sup>11</sup>/ R&O at para. 33.

The fact that a cellular carrier should be permitted to utilize its spectrum for dispatch service is reflective of regulatory parity among spectrum licensees. The fact that a cellular carrier may make spectrum available for dispatch service does not demonstrate that the carrier has "excess" spectrum, but rather illustrates the promotion of efficient utilization of spectrum and promotion of competitive services. In order to protect its members' interests at the expense of the public interest in general, AMTA's proposal simply suggests that the Commission should deprive a cellular licensee of spectrum if it dares to suggest that it could provide a competitive service offering in an efficient manner. Accordingly, AMTA's proposal for competitive protection should be rejected.

WHEREFORE, for the reasons outlined above, RCA respectfully requests that AMTA's Petition be denied.

Respectfully submitted,

THE RURAL CELLULAR ASSOCIATION

By: David L. Jones (se)  
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Dated: May 24, 1995

**CERTIFICATE OF SERVICE**

I, Nicola A. Chenosky, of Kraskin & Lesse, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Opposition Of The Rural Cellular Association To The Petition For Reconsideration Of The American Mobile Telecommunications Association, Inc." was served on this 24th day of May 1995, by first class, U.S. mail, postage prepaid, to the following parties:

  
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